Supreme Court, U.S.
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No:

IN THE

Supreme Court of the United States

UNITED STATE OF AMERICA,

Respondent,

vs.

JOSEPH O. SALADINO,

Petitioner,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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208-562-1089

August 28, 2006

QUESTIONS PRESENTED

Petitioner raised several issues of law and precedent relative to personam and subject matter jurisdiction with the Ninth Circuit and the Court denied Petitioner's appeal and the motion for en banc hearing without comment regarding the jurisdiction issues raised. The issues of law and precedent presented herein have either not been addressed by the Court with the particularity presented herein or there is new evidence this Court should review which may reverse this Court's and lower Courts' prior rulings. The level of detail in the following questions and the particular nuances of the questions are required since, by the Court addressing said questions, there will be added clarity established which may eliminate misunderstandings and confusion with respect to future litigation. The questions for consideration are as follows:

1. Petitioner has been required to speculate with regard to the existence of a United States law which would "expressly" extend the authority of the Secretary to the fifty freely associated compact states ("several states") and said silence by U.S. Attorney's and the Courts is a denial of due process. With respect to said denial of due process issues, the questions are:

a. Is it a denial of Petitioner's right to due process for Petitioner to be required to speculate as to the meaning of U.S. laws thereby potentially subjecting his family and himself to prison and other personal damage when the Courts refuse to reveal the law (or the absence of said law) which "expressly" extends the authority of the Secretary to the several states with respect to 4 USC § 72.

b. Is it a denial of Petitioner's right to due process for over 20 U.S. Attorneys and several of the lower Courts to remain silent and refuse to responsively address the issues of personam and subject-matter jurisdiction raised by Petitioner in the Ninth Circuit with regard to 4 USC § 72.

2. Title 4 USC § 72 restrains all offices associated with the seat of government from exercising their authority

outside "the District of Columbia, and not elsewhere" unless Congress "expressly" extends an office's authority, directly and in unmistakable terms, to other specific locations. The questions relative to 4 USC § 72 are:

a. Has Congress, in fact, "expressly" extended the authority of the Secretary of the United States Treasury ("Secretary"), the Commissioner of Internal Revenue ("Commissioner") and the Internal Revenue Service ("IRS") to the several states in United States ("U.S.") law pursuant to 4 USC § 72?

b. When U.S. Attorney's and the Courts refuse to address the mandates of 4 USC § 72, is it unreasonable for Petitioner to assume that no law exists by which Congress has "expressly" extended the authority of the Secretary to the several states thereby establishing that Petitioner, as one who lives and works in one of the several states, has no duty with regard to Title 26 as cited by Respondent in the original complaint and challenged by Petitioner?

c. Can the Secretary, the Commissioner and the IRS, pursuant to 4 USC § 72, create an internal revenue tax liability against a Citizen in one of the several states when Congress has not "expressly" extended the authority of the Secretary and associated Title 26 ("IRC") laws, under which said liability was allegedly created, to the several states?

d. Does 48 USC § 1612(a) "expressly" extend the authority of the Secretary, with respect to "chapter 75 of subtitle F of the Internal Revenue Code of 1954 [26 USCS §§ 7201 et seq.]," outside "the District of Columbia" to the Virgin Islands as mandated by 4 USC § 72?

e. Has Congress in a similar manner "expressly" extended the authority of the Secretary with respect to "chapter 75 of subtitle F of the [IRC]...", or any other sections of the IRC, to the several states?

f. Does IRC § 6700 (or any of the IRC sections cited by Respondent regarding jurisdiction) have any force and effect in the several states when Congress has not "expressly" extended the authority of the Secretary and said IRC sections by law to the several states?

g. Does Congress have a greater or lesser duty to so "expressly" extend the authority of the Secretary to the several states (areas over which Congress has limited jurisdiction) than as it does to "expressly" extended the Secretary's authority to the Virgin Islands in 48 USC § 1612(a) (an area over which Congress has greater or possibly, complete jurisdiction)?

h. By what statutory authority, pursuant to 4 USC § 72, does Respondent seek to make provisions of the IRC, cited by Respondent in the original complaint, applicable to Petitioner?

3. Recently Respondent has cited *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991) in response to inquiries regarding the Secretary's authority in the several states pursuant to 4 USC § 72. The questions relevant to *Hughes* and 4 USC § 72 are:

a. Are the offices of Secretary, the Commissioner and the IRS each subject to the mandates of 4 USC § 72?

b. Does IRC § 7621, as cited by the *Hughes* Court, "expressly" or "impliedly" extend the authority of the Secretary to the several states, pursuant to the mandates of 4 USC § 72 and the definition of State in IRC § 7701(10), when the office of Secretary is not referenced at all in § 7621?

c. Does IRC § 7621, as cited by the *Hughes* Court, "expressly" or "impliedly" extend the authority of the office of the President to the several states pursuant to the mandates of 4 USC § 72 and the definition of State in IRC § 7701(10)?

d. Is the IRS an Agency of the U.S. and thereby subject to the mandates of 4 USC § 72; notwithstanding the contrary claims by U.S. Attorney's, in the *Diversified Metal Products v. T-Dow Company Trust, Internal Revenue Service, and Steve Morgan* case as cited herein, that the IRS is NOT an agency of the U.S.?

e. If the IRS IS an agency of the U.S., does the *Hughes* Court, in error, attempt to extend the authority of the IRS outside "the District of Columbia" (Washington, D.C.) without citing a U.S. law by which Congress actually "ex-

pressly" extends the authority of the Secretary to the several states?

f. Has the President established "internal revenue districts" in the several states pursuant to IRC § 7621 and as implied by the *Hughes* Court?

g. If "internal revenue districts" do not exist in the several states because either the President has not actually established said districts or the President has not approved the actual establishment of said districts by another office of government, then upon what basis in law does the Secretary administer and enforce internal revenue laws in internal revenue districts in the several states which do not exist?

h. Does 4 USC § 72 authorize the *Hughes* Court to extend the authority of the offices of the Secretary, the Commissioner or the IRS to the several states (outside the District of Columbia) when Congress has not done so or has Congress reserved that right to itself through the enactment of 4 USC § 72?

4. New evidence, as cited herein, was presented to the Ninth Circuit, relative to IRC § 83(a) and the regulations thereunder, to substantiate that previous denials by the lower courts were in error since the U.S. recently contended successfully with this Court that the term "any property" means all inclusively "all property" unless Congress explicitly excludes specific property by U.S. law. The questions relative to the issue of the § 83(a) deduction are:

a. Can the U.S. successfully contend with this Court that "any property" means all inclusively "all property" when Congress has not explicitly excluded specific property as the U.S. did in the *Monsanto* and other cases cited herein and then, in other tax related cases, contend successfully with the Courts (see *Talmage v. Commissioner* ("CIR"), S.Ct. #97-5299, Appendix F) that the term "any property" excludes labor as property from the § 83(a) deduction when neither Congress nor the Secretary have explicitly excluded labor as property from said deduction in U.S. law or the regulations thereunder?

b. If neither Congress (in U.S. law) nor the Secretary (through regulations) have excluded the value of labor (cost) from the meaning of "any property" to be deducted from compensation for services rendered and returned to the "taxpayer" pursuant to IRC § 83(a) and the regulations thereunder, by what authority do the Courts and the IRS exclude the value of labor from the term "any property" relative to the § 83(a) deduction?

c. Since the *Murphy* Court rejected the governments contention that compensation with no "basis" is taxable, can the same arguments of "gain," as cited by *Murphy*, be applied to labor compensation in light of the § 83(a) deduction for the "value of any money or property" given in exchange for said compensation as contended by Petitioner herein?

d. Should the *Talmage* opinion be overturned in light of *Murphy, Monsanto* and the three other cases and evidence as cited herein by Petitioner?

5. IRC Chapter 1 imposes a tax on "the taxable income of **every** individual" as well as "married individuals" and "**every** head of household" or in other words, every individual on the planet, therefore Congress has not identified the subject of the IRC Chapter 1 tax. The Secretary, however, has created the subject of the IRC Chapter 1 income tax in the regulations beyond that articulated by Congress. The questions relative to this issue are:

a. Has Congress identified the subject of the IRC Chapter 1 tax within U.S. law—with any greater specificity than everyone on the planet—as it has in IRC Chapters 2, 21 and 24 as cited herein?

b. Does the Secretary have the authority to impose a tax on a specific class of individuals by independently identifying the subject of said tax by Treasury Regulation only (26 CFR §§ 1.1-1(a)(1) and 1.1-1(c)) when the Constitution and the 16th Amendment authorizes only Congress to lay and collect a tax?

c. If the Secretary is authorized to create the subject of the IRC Chapter 1 tax by regulation when Congress has not done so, then by what authority does the Secretary

determine the subject of the Chapter 1 tax?

d. Can the Secretary lay an income tax by naming a subject to the IRC chapter 1 income tax when Congress has not done so?

e. Can Respondent point to authorities naming as subject one with the political status and *situs* of the Petitioner?

f. Is the citizen in IRC §§ 1402(b) and 3121(e) really the same Citizen as defined in 26 CFR 1.1-1(c) [1]?

g. Is one who works for a private company within one of the several states rightfully deemed to be the employee of IRC § 3401(c)?

h. Is it reasonable for Petitioner to believe that until Congress "expressly" extends the authority of the Secretary to the several states or Congress names the Petitioner as subject of the IRC Chapter 1 tax, Respondent is powerless to even approach the Petitioner regarding any matter governed by the IRC for lack of personam and subject matter jurisdiction and statutory authority?

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[1] See Appendix B-10

PARTIES TO THESE PROCEEDINGS

The parties to this proceeding are named in the caption

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Joseph O. Saladino respectfully petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in this case.

COURT OPINIONS

The opinion of the U.S. Court of Appeals for the Ninth Circuit for both the Dismissal (March 29, 2006) and the Denial of Appellant's Motion for en banc hearing (May 31, 2006) are unpublished. Both denials are included as Appendix A-1 and A2 respectively.

JURISDICTION

The judgment of the court of appeals was entered on March 29, 2006 denying Petitioner's appeal and ignoring the issues of jurisdiction raised by Petitioner. A timely petition for rehearing en banc was also denied on May 31, 2006 without any comment regarding the jurisdiction issues raised. This Court has jurisdiction pursuant to 28 USC § 1254(1).

RELEVANT STATUTORY PROVISIONS

4 USC § 72, 48 USC § 1612, IRC § 83(a), 26 CFR §§ 1.1-1(a)(1), 1.1-1(c)[2] and 26 CFR § 1.83-3(g) and others are cited at length in the Appendix.

STATEMENT

Respondent filed a civil action against Petitioner in the U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ("USDC") on March 29, 2004 alleging crimes of fraud and false statements claiming that Petitioner had acted in violation of IRC §§ 6700 and 6701. Based on the alleged violations of IRC §§ 6700 and 6701 and the alleged jurisdiction of the Secretary, Respondent alleged that the Secretary had authority to obtain an in-

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[2] See Appendix B-10

junction against Petitioner in the several states based on the alleged jurisdiction of IRC §§ 7402 and 7408[3]. Based on the alleged authority of the Secretary for injunctive relief, Respondent alleged that the USDC had jurisdiction to issue said injunction based on 28 USC §§ 1340, 1345, and 1391[4]. Since there is no evidence in the record to substantiate that Congress has "expressly"[5] extended the authority of the Secretary to enforce said internal revenue laws within the several states—unless Respondent can show said law(s)—the Secretary has no authority or jurisdiction to initiate a civil action against Petitioner in the several states.

It is well settled by this Court that once jurisdiction is challenged, proof of jurisdiction is a burden upon the party asserting it.[6] Respondent has challenged the juris-

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[3] Sections 7401 and 7408 authorize an injunction to the Secretary to enforce internal revenue laws against Petitioner only if Congress has "expressly" extended the authority of the Secretary and IRC §§ 6700, 6701, 7402 and 7408 to the several states by law. (See 4 USC § 72).

[4] 28 USC §§ 1340, 1345 and 1391 are applicable to Acts of Congress relative to internal revenue laws and civil actions initiated by agencies [IRS] or officers [Secretary] of the U.S. against Petitioner only if Congress has respectively and "expressly" extended their authority to the several states by law. (See 4 USC § 72). Unless Congress has "expressly" extended the authority of the Secretary, with regard to IRC §§ 6700, 6701, 7402 and 7408, to the several states, the Secretary has no authority to initiate a civil action and the Courts have no jurisdiction to enforce said internal revenue laws against Petitioner in the several states pursuant to 4 USC § 72, 28 USC §§ 1340, 1345 and 1391.

[5] See Black's Law Dictionary, 6th Ed. "Expressly", see Appendix K.

[6] See *State of Rhode Island v. State of Massachusetts*, 37 US 709, 718 (1838); *KVOS v. Associated Press*, 299 U.S. 269, 57 S.Ct. 197, 200, 31 L.Ed. 183 (1936): "...[w]here the allegations...are challenged by the defendant in an appropriate manner, ***the plaintiff must support them by competent proof.***" See also *F & S Contr. Co. v. Jensen*, 337 F.2d 160, 161-162, (10th Cir.1963) (***"[I]t is now settled that when there is an issue as to the sufficiency of jurisdictional amount, the burden of providing jurisdiction is on the party asserting it.*** *City of Lauden, Okla. v. Chapman*, 257 F.2d 601 (10th Cir.); *McNutt v. General Motors Acceptance Corp.*, 289 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135. Further more, statutes conferring jurisdiction...are to be strictly construed ***and doubts resolved against federal court's jurisdic-***

diction of the Secretary pursuant to 4 USC § 72 on numerous occasions only to have said challenges met with complete silence from Respondent and the Appellate Court, with respect to the mandatory restrictions upon the Secretary within the several states pursuant to 4 USC § 72.

REASONS FOR GRANTING THE WRIT

In Summary

The issues in this Petition are as follows:

1. Petitioner's right to due process has been denied/violated by Respondent and the Appellate Court have concealed and kept secret the Secretary's jurisdiction in the several states by their refusing to state what the law is regarding personam and subject matter jurisdiction respecting 4 USC § 72 and 26 USC § 83(a) (see Appendix B-7 and B 6 respectively) thereby forcing Petitioner to speculate as to the law by which Congress has authorized the Secretary to act within the several states.

2. That Petitioner has NOT found any U.S. law by which Congress has "expressly" extended the authority of the Secretary to the several states, pursuant to 4 USC § 72, and Respondent and the Appellate court continue an action against Petitioner without establishing personam and subject matter jurisdiction on the record.

3. The *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991)[7] opinion, in error, states that 4 USC § 72 does not foreclose the IRS from acting outside Washington, DC when the purpose of 4 USC § 72 has exactly that purpose. Moreover, 26 USC § 7621[8], cited by *Hughes*, does not "expressly" extend the authority of the office of Secretary to the several states and there is no evidence that the President, pursuant to IRC § 7621, has ever established inter-

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Continued...

tion. *Aetna Ins. Co. v. Chicago R.I. & P.R.R.*, 229 F.2d 584 (10th Cir.); *Hely v. Ratta*, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248."

[7] See Appendix C.

[8] See Appendix B-5

nal revenue districts within the several states.

4. Petitioner contends that the USTC opinion, *Talmage v. CIR*, S.Ct. #97-5299, does not correctly decipher the meaning of "any money or property" (see 26 CFR § 1.83-3(g)) in light of four recent U.S. Supreme Court decisions cited herein and Petitioner's belief that the issue of basis does not enter into the § 83(a) equation and that consistency dictates that the *Talmage* opinion should be overturned.

5. There is no subject of the IRC chapter 1 tax identified by Congress and the Secretary has no constitutional or statutory authority to determine the subject of the IRC chapter 1 tax when Congress has not done so and the Secretary by Treasury Regulation 26 CFR 1.1-1(c) extends Chapter 1 beyond the intent of Congress thereby causing the Secretary to exceed his authority.

Petitioner's Right to Due Process has been denied

"It [is] the judiciary's duty 'to say what the law is' *Marbury v. Madison, 1 Cranch.* 137, 177 (1803) (Marshal, C.J.) ."[9] Thus, Petitioner has a right to know, and the Courts have a duty to say what the law is. The Appellate Court's silence is a denial of Petitioner's rights to due process thereby forcing him to speculate as to which law authorizes the Secretary in the several states.

As this Court well knows, it is a duty of the Court to protect Petitioner's rights. *Boyd v. U.S.*, 116 U.S. 616, 635 states that "...it is the duty of the courts to be watchful for the constitutional rights of the citizens, and against stealthy encroachment thereon."

It is not frivolous for Petitioner to ask what Act of Congress "expressly" extends the authority of the Secretary to the several states. This Court previously stated that "It is well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears [see 4 USC § 72]" [*Foley Brothers, Inc. v. Filardo*, 336 US 281

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[9] See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995)

(1948)] and again in *Caha v. U.S.*, 152 US 211 this Court also states that:

> "The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." (Emphasis added)

There is no evidence in the administrative or judicial record of the USDC and Appellate Courts in this case to rebut the maxims, facts and law as presented by Petitioner relative to the Secretary's jurisdiction in the several states pursuant to 4 USC § 72.

In all of Petitioner's actions, he has relied upon the following maxims/axioms:

1. Congress may lay and collect taxes, as authorized by the 16th Amendment[10]. Congress must name the subject of any income tax it imposes.

2. The law is perfect. All Americans have the right to access the law and to know of its proper application and operation, even the tax law.

3. The law must be complied with – all of it, even by the Secretary (and his alleged Delegates the Commissioner and the IRS), even 4 USC § 72, IRC § 83(a), 26 CFR §§ 1.83-3(g) and 1.1001-1(a)[11].

4. The law must be applied openly and with indifference.

5. Statutes and regulations are intrinsic evidence. To contradict a statutory claim one must either prove, 1) the statute is unconstitutional, 2) the interpretation of the statute is flawed, or 3) there exists applicable exceptions to the statute relative to the claim as made. Any other response is "frivolous".

6. *Expressio unius est exclusio alterius*/Clear language/Void for vagueness. By denying Petitioner access to U.S. law, he is deprived of access to an entire branch of government (Congress) as it relates to the Codes of the

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[10] See Appendix M.

[11] See Appendix B-11

U.S. (taxation without representation). The Court's silence evaporates one's rights to arrange his personal affairs according to law (IRS publications are not law).

7. Statutory definitions are not "inclusions." A definition ceases to be a definition if the term "includes" is interpreted as a term which expands the definition to elements not specifically mentioned. A definition excludes all non-essential elements by not listing them.

8. IRC § "83(a) explains how property received in exchange for services is taxed" [12] and this applies to all compensation for labor

9. The Fair Market Value ("FMV") of property is determined by an arm's length transaction. FMV equals contract value.

10. Cost is excludible or deductible from gross revenue. Labor is property, all property is cost under the law; labor's value is cost, not profit.

11. Only Congress writes the law. Administrative regulations can't deviate from statute because regulations aren't written by Congress.

The absence of judicial clarification[13] by the lower Courts and its failure or refusal, on two separate occasions, to decide the presence or absence of the law by which Congress has "expressly" granted leave to the Secretary to act within the several states and the void for vagueness doctrine require and force Petitioner to speculate as to his duty with respect to the Secretary's authority within the several states pursuant to the IRC and 4 USC § 72. [14] The consequences of said speculation, if Pe-

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[12] *Montelepre Systemed, Inc. v. Commissioner ("CIR")*, 956 F.2d 496 at 498 (CA5 1992).

[13] At no time have the lower courts addressed the issue of the Secretary's jurisdiction in the several states pursuant to 4 USC § 72.

[14] See *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("**No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids**") (citations omitted); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("**[A] statute which either forbids or requires the doing of**

titioner is wrong and the Courts refuse to state what the law is, could result in criminal conviction and prison for Petitioner and untold damage to him and his family.

Petitioner's inquiry is about whether Congress intended to subject Petitioner and Citizens within the several states to the IRC income taxes and other provisions therein. (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (stating that "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress"); *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) (providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them")). The evidence in U.S. law which demonstrates conclusively that the Secretary, in fact, has express leave from Congress to act within the several states, pursuant to 4 USC § 72, is of paramount importance to this case and petition.

Congress has not authorized the Secretary in the Several States

For over 2 years, the good name and rights of Petitioner have been smeared and violated by Respondent, the Courts and others by their concealing from Petitioner, through their silence, THE law by which Congress has "expressly" extended the authority of the Secretary to the several states pursuant to 4 USC § 72.[15] As a "Citizen of

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an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law") (citations omitted).

[15] Petitioner's demand has always been that Respondent and the Courts prove the Secretary's authority within the several states and in U.S. law pursuant to the mandates of 4 USC § 72 and the response from Respondent or the Courts has either been complete silence or references to Court rulings which do not show any U.S. law by which

the United States" (see FN[37] *infra*), Petitioner has a right to have public servants (Respondent) be responsive to the challenge made regarding the Secretary's jurisdiction. To date, over 20 U.S. Attorneys and the lower Courts have refused to address the issue with a responsive answer from U.S. law. Therefore, Petitioner can only speculate that there is no such law which "expressly" grants the Secretary authority in the several states.

Respondent has recently begun citing *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991) in response to the jurisdictional challenges regarding the Secretary. The *Hughes* ruling claims that "4 USC § 72 does not foreclose the authority of the IRS outside the District of Columbia." The only reason given by the *Hughes* Court is that the President is authorized to establish internal revenue districts outside Washington, D.C.[16] This argument fails every aspect of the 4 USC § 72 litmus test as follows:

1. Establishing internal revenue districts outside Washington, D.C. is not the same as establishing said districts within the several states; especially in light of 4 USC § 72

2. 4 USC § 72 mandates that ALL offices associated with the government be "expressly" authorized to act within the several states. Authorizing the office of President in IRC § 7621 does not "expressly" authorize the office of Secretary when the Secretary is not even mentioned.

3. With few exceptions, it is the Secretary who is authorized by Congress to write all needful rules and regulations for the administration and enforcement of the IRC (See IRC §§ 7801, 7805) , therefore it is that Office which must acquire express leave by Congress to act within the

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Congress has "expressly" extended the authority of the Secretary to the several states.

[16] Congress has "expressly" extended the authority of the Secretary to the Virgin Islands with respect to IRC Chapter 75 and this area is obviously outside "the District of Columbia" but not remotely associated with the several states.

several states. The *Hughes* Court implies in error that IRC § 7621 is the "expressly" stated grant of leave issued by Congress as required under 4 USC § 72, claiming that the office of the President of the U.S. is somehow the same office as that occupied by the Secretary.

4. The term "State" as used in IRC § 7621 includes "the District of Columbia" (see IRC § 7701(a)(10))[17]. Even if "State" could be concluded to include the several states, this definition does not "expressly" extend the office of Secretary to the several states when the several states are not "expressly" mentioned in the meaning of "State" as used in § 7621 (see § 7701(a)(10)). A "definition" is a limitation upon the term defined (See any dictionary). Petitioner claims, without rebuttal, that Congress has limited the Secretary's authority to "the District of Columbia" and the Virgin Islands (see 48 USC § 1612; Appendix B-9), never having "expressly" granted the Secretary the statutory leave to exercise his authority in the several states.

5. Moreover, there is no evidence in the record of this case, in the *Hughes* case or in any other case to establish the material fact that the President has established said internal revenue districts[18] in the several states? How-

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[17] Under this definition, Alaska and Hawaii were removed from applicability upon receiving freely associated compact state status (See P.L. 86-624, § 18(j); P.L. 86-70, § 22(a)). The several states are "countries" (See 28 USC § 297(b)).

[18] The *Hughes* Court implies that the President's (Secretary's alleged "implied") authority outside Washington, D.C. pursuant to IRC § 7621 somehow means that the Secretary's authority has been "expressly" extended to the several states when in fact all the Court said was that the IRS can act outside of Washington, D.C. Pursuant to 48 USC § 1612, Congress extended the Secretary's authority (and presumably the IRS) to the Virgin Islands. As a result of this misleading description of the IRS (Secretary's) authority, Respondent and all the other Courts continue to promulgate the error that *Hughes* extends the authority of the IRS to the several states which violates the letter and spirit of 4 USC § 72. To date, Respondent and the Appellate Court have not provided one U.S. law by which Congress has "expressly" extended the authority of the Secretary to the several states as man-

ever, there is evidence that the President established "customs districts," but no internal revenue districts have ever been established by the President within the several states. [19]

If no internal revenue districts have been established in the several states by the President[20], then out of which internal revenue districts established by the President within the several states does the Secretary administer and enforce internal revenue laws?

The law is by no means settled and there is confusion in the Courts as to applicability of 4 USC § 72 with respect to the Secretary's authority in the several states. As shown herein, neither IRC § 7621 or the *Hughes* opinion passes the litmus test of 4 USC § 72.

For the *Hughes* court to be correct when it states that "4 U.S.C. § 72 does not foreclose the exercise of authority by the IRS outside the District of Columbia", one of two material facts must be true, either:

1. The IRS IS an Agency of the U.S. and the IRS, the Commissioner and the Secretary are all somehow NOT subject to the mandates of 4 USC § 72. If this true, by what authority can said offices of government and the Courts ignore the mandates of 4 USC § 72? Without the

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dated by 4 USC § 72 thereby forcing Petitioner to speculate that no said authority for the Secretary in the several states exists in U.S. law.

[19] The burden of proof that said districts exist and have been established by the President within the several states is upon Respondent and the Courts if they hope to establish jurisdiction on the record. Without said evidence in the record, Respondent and the Courts cannot assume that said districts exist and therefore cannot assume that jurisdiction exists.

[20] In 1998, via Executive Order ("E.O.") #10289, as amended, President William J. Clinton authorized the Secretary to establish revenue districts under authority of IRC § 7621. Although § 7621 is not listed in the Parallel Table of Authorities and Rules, E.O. #10289 is listed. The implementing regulations for said Executive Order are found in 19 CFR Part 101. Said regulation establishes *"customs collection offices"* in each state of the union; it does not establish "internal revenue districts". A note at 26 CFR § 301.7621-1 confirms that E.O. #10289 is the only authority for establishing revenue districts.

law which exempts said offices from the mandates of 4 USC § 72, the *Hughes* Court is in error and this case should be overturned; or

2. The IRS IS NOT an Agency of the U.S. [21], as con-

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[21] There exists other evidence that the IRS is not an Agency of the United States Government which Petitioner will brief upon request by the Court and which are summarized as follows:

1. The IRS does not show up in the list of Departments, Offices, Agencies and Bureaus listed in the Treasury as found in 31 USC § 301 et. Seq. (See Appendix E-3)

2. Petitioner can show that the law by which the IRS is appropriated funds to operate shows that it is not a service within the Department of the Treasury ("Treasury").

3. Evidence shows that the IRS is not able to spend Treasury appropriations for "Mission Critical" functions such as postage.

4. The IRS (along with other agencies "outside" the Treasury) is required to **reimburse** the Fiscal Service/ Financial Management Service (FMS) (a service within the Treasury, see 31 U.S.C.S. § 306(a), Appendix E4), for postage expended by the FMS on behalf of the IRS.

5. In 31 U.S.C. § 1301 (see Appendix E5) under "2. Applicability", an Agency within a department appropriation IS permitted by law to spend money not appropriated as long as said expenditures meet the mission of the spending agency within the Department to which funds have been appropriated.

6. Agencies which are not part of the Treasury are required to reimburse the Treasury/FMS for expenditures paid by the FMS on behalf of said "outside" agency. (see 31 U.S.C.S. § 306, Appendix C).

7. The IRS and the Department of Agriculture, both "outside" organizations to the Treasury, are required to reimburse the FMS for postage in the same way the Social Security Trust Funds are to reimburse the FMS for costs incurred in the preparation, posting and payment of Social Security Trust benefit payments. There is no such provision for Departments, Offices, Agencies and Bureaus within the Treasury to reimburse said Department for any such expenditure!

8. Also in 31 U.S.C. § 306 said reimbursement by the IRS is made for postage incurred by the FMS for making check payments on behalf of the IRS; a "Mission Critical" function such as postage is most certainly within the scope and mission of the IRS.

9. The fact that the Commissioner is under the direction and supervision of the Secretary does not overcome the fact

tended by two U.S. Attorneys (officers of the court) in the case of *Diversified Metal Products v. T-Dow Company Trust, Internal Revenue Service, and Steve Morgan*, (see Appendix E-2). If this is true then the *Hughes* Court is correct and 4 USC § 72 does not foreclose the IRS from operating outside "the District of Columbia" since 4 USC § 72 is only applicable to offices or agencies connected to the seat of government.[22]

Either the IRS IS an Agency of the U.S. and is somehow immune from and unaffected by the mandates of 4 USC § 72 or the IRS is NOT an Agency of the U.S. thereby making it immune from and unaffected by the mandates of 4 USC § 72. Petitioner has a right to have this Court clearly state the basis in law by which the Secretary, the Commissioner and the IRS are immune from and unaffected by the mandates of 4 USC § 72.

Several Court opinions have been cited by Respondent that state the IRS can exercise its authority outside Washington, D.C. Every case cited to date is off-point. Any "expressly" granted exception to the limitations of the Secretary's authority to "the District of Columbia, and not elsewhere," as mandated by 4 USC § 72, are to be found

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that the IRS is not an Agency of the U.S. or of the Treasury. It is apparent by this reimbursement policy that the IRS has its own appropriations apart from that of the Treasury. In addition, the reimbursements required of the IRS demonstrate that the IRS does not have Franking privileges as authorized by Congress in its Act of March 8, 1868 (See Appendix E-1).

10. Petitioner tends to agree with U.S. Attorneys RICHARDSON and WARD (See Appendix E-2) that the IRS is not an agency of the U.S. and not part of the Treasury Department. This evidence, and more, brings into question the nature of the IRS as it relates to Citizens in the several states.

[22] If the IRS is NOT an Agency of the U.S., then there is monumental fraud being committed by the IRS daily (a non-Agency of the U.S.) and Respondent daily against Citizens in the several states in violation of 4 USC § 72. In such a case this Court has a duty, pursuant to 18 USC § 4, to report and facilitate the criminal prosecution of all those responsible for said fraud.

in U.S. law and NOT the Courts.[23] Official powers granted by Congress cannot be extended by the Courts but rather only by Congress:

> "Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, **they must be conferred by Congress.**" *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 51 S.Ct. 587 (1931) (Emphasis added)

To agree with the *Hughes* Court, this Court must find that the *Hughes* ruling and IRC § 7621 meet the criteria for "ALL" offices attached to the seat of government as mandated by 4 USC § 72 as follows:

1. The Office of the Secretary is "expressly" and not "impliedly" authorized by Congress in IRC § 7621;

2. The Office of the Secretary is "expressly" and not "impliedly" authorized by IRC § 7621 to exercise his authority within the several states;

3. The President has been "expressly" and not "impliedly" authorized by Congress in IRC § 7621 to establish internal revenue districts within the several states;

4. The President has, in fact, established said internal revenue districts within the several states; and

5. The Secretary (and consequently the Commissioner and the IRS), by law, is immune from and unaffected by the mandates of 4 USC § 72.

For the other Court rulings to be binding, said rulings must at the same time show THE law by which Congress has "expressly" extended the authority of the Secretary to the several states. For the lower Courts and Respondent to ignore U.S. law which controls WHERE the Secretary can exercise his authority, appears to be open rebellion and sedition against the laws of U.S. in violation of 18

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[23] The Courts can suggest that the IRS has authority outside "the District of Columbia" and within the several states but unless said opinions also cite the law by which Congress has "expressly" extended the authority of the Secretary to the several states, said opinions are exactly that "opinion" and have no weight when deciphering the jurisdiction of the Secretary within the several states.

USC §§ 2383 and 2384.

Without said evidence to the contrary in U.S. law, the following remains true and unrebutted by Respondent:

1. Congress has not "expressly" authorized the Secretary to exercise his authority within the several states.

2. Congress has not "expressly" authorized the Secretary to create an internal revenue tax liability against Citizens in the several states unless Congress has "expressly" so authorized the Secretary by law to act within the several states;

3. All of the codes and alleged jurisdiction and authority cited by Respondent are moot without the underlying law by which Congress has "expressly" granted the Secretary leave to act within the several states;

4. There are no income tax Administrative Remedies available to Petitioner without the underlying law by which Congress has "expressly" extended said administrative remedies to the several states;

5. The "Anti-injunction Act" does not apply to Petitioner without the underlying law by which Congress has "expressly" extended said Act to the several states;

The Courts do not have the authority to "expressly" extend the authority of the Secretary when Congress has not done so. Therefore, the *Hughes* ruling must be overturned because it is misleading, being used by Respondent to mislead the Courts and it does not meet the litmus test of 4 USC § 72.

Secretary Conceals lawful Right from Citizens

Even if Respondent can present a law by which Congress has, in fact, "expressly" extends the authority of the Secretary to the several states, Petitioner and other Citizens in the several states are yearly denied a rightful deduction as articulated by Congress in IRC § 83(a).

Citizens and all Tax Professionals generally determine what is to be included in "Gross Income" by starting with IRC § 61(a)[24] or line 7 of the 1040 form;

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[24] See Appendix B-4

IRC § 61(a) defines what constitutes "Gross Income." Once "Gross Income" is determined pursuant to IRC § 61(a), Citizens and Tax Professionals generally proceed to IRC § 62 to determine what can be deducted from "Gross Income" which, when deducted, leaves a balance called "Adjusted Gross Income." Once "Adjusted Gross Income" is determined, Citizens and Tax Professionals generally proceed to IRC § 63 to determine what further amounts can be deducted which, when deducted, results in a balance known as "Taxable Income." Once "Taxable Income" is determined, Citizens and Tax Professionals generally proceed to IRC § 1 to determine the tax liability.

However, Citizens and Tax Professionals rarely read and understand the first seven words of IRC § 61(a); "Except as otherwise provided in this subtitle." This is the subtle clue to Citizens and Tax Professionals that § 61 is the definition of "gross income" unless there is another definition of "gross income" in subtitle A. In fact, there are other definitions of "Gross Income" which supersede this IRC § 61(a) definition of "Gross Income"[25] in the IRC.

Pursuant to IRC § 61(a)(1), compensation for services is included in "Gross Income," EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE. This means that if another section of subtitle A provides for a different definition of "Gross Income" or specifically articulates what is to be included in or excluded from "Gross Income," then the § 61(a) definition is not applicable.

In fact, the Treasury Regulation 26 CFR §1.61-1(b),[26] which is applicable to 26 USC § 61(a), states that:

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[25] **For example** full time ministers of the gospel, pursuant to IRC § 107, can **exclude** from "Gross Income" the rental value of a home furnished to them by their church as part of their compensation (IRC § 107 states, "In the case of a minister of the gospel, **gross income does not include**—(1) the rental value of a home furnished to him as part of his compensation..." As one can easily see by § 107, a minister's home cannot be taxed under any circumstances, since IRC §§ 62 [adjusted gross income] and 63 [taxable income] both start from a value known as "Gross Income;" an amount which by law cannot include the rental value of a minister's home.

[26] See Appendix B-13

"...To the extent that another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, **such other provision shall apply notwithstanding section 61 and the regulations thereunder.**" Therefore, § 83(a) overrides § 61 when it comes to determining the amount of federal "gross income" one has.

Citizens and Tax Professionals alike receive compensation for services actually rendered and consider it to be included in "Gross Income." In summary, IRC § 83(a) explains how property received in exchange for services rendered is taxed.[27] IRC § 83 applies to all compensation paid for both the services of corporations, and for the services of individuals.[28] Labor is property[29]. The fair market value ("FMV"") of property ("amount paid" or "labor") is established through the terms of an "arm's length transaction."[30] The language of IRC § 83(a) states that when compensation is received [in exchange] for services rendered, ONLY the "excess" of the "property" [compensation] over the "amount paid" [value of labor] in cost is to be included in "gross income" (see Appendix B-6).

The formula for "Gross Income" pursuant to IRC § 83(a) is:

- "Excess" = "Gross Income"; and

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[27] See *Montelepre Systemed, Inc. v. CIR*, 956 F.2d 496 at 498 (CA5 1992)

[28] See 26 CFR § 1.83-3(e) (Appendix B-14), (f); *MacNaughton v. CIR*, 888 F.2d 418 (CA6 1989) (Appx D-2); *Pledger v. CIR*, 641 F.2d 287, 293 (CA5 1981) (Appx D-3); *Alves v. CIR*, 734 F.2d 478, 481 (CA9 1984) (Appx D-4); *Klingler Electric Co. v. CIR*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991) (Appx D-5); *Robinson v. CIR*, 82 USTC 444, 459 (1984) (Appx D-6); *Cohn v. CIR*, 73 USTC 443, 446-47 (1979) (Appx D-7).

[29] See *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1883); *Slaughterhouse Case*, 83 U.S. 395, 419; 16 Wall. 36-130 (1873); *Adair v. U.S.*, 208 U.S. 161, 172 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Black's Law Dictionary*, 6th Ed., "Property."

[30] See 27 CFR § 70.150(b); *U.S. v. Cartwright*, 411 U.S. 546, 552 (1973); *Hicks v. U.S.*, 335 F.Supp. 474, 481 (Colo.1971); *Pledger v. CIR*, supra; *Black's Law Dictionary*, 6th Ed., "Arm's length transaction."

- "Excess" = ("property") minus ("amount paid") or
- "Excess" = (compensation) minus (value of labor).

The "amount paid" is defined in 26 CFR § 1.83-3(g)[31] as the definition of cost:

> "(g) Amount paid. For purposes of section 83 and the regulations thereunder, the term 'amount paid' refers to the value of any money or property [labor is property, see fn[29] *supra*] paid for the transfer of property [compensation] to which section 83 applies."

It is important to point out to the Court that the USTC opinion, *Talmage v. CIR*, S.Ct. #97-5299[32], relied on an error that IRC §§ 83 and 1001 address the "basis" of labor when in fact IRC §§ 83 and 1001 and the regulations thereunder do not consider the basis of the labor at all. The cost is defined as the "value" (FMV) of any labor or property and "basis" is not a consideration at all. Petitioner believes that this is a fatal flaw in the *Talmage* opinion and should therefore be reversed by this Court.

Furthermore, unlike the contentions in *Talmage*, Petitioner has not contended that "Wages are not income" as contended by Respondent, the Appellate Court and the Court of Claims. In fact, Petitioner asked the Appellate Court to cite where Petitioner had contended that "wages are not income" and again, the Court was completely silent and refused to corroborate its claim in its ruling.

The value of the "amount paid" [labor] is determined by what the employer paid [compensation] for the services rendered [labor]. 26 CFR § 1.83-3(g), which is all inclusive and includes "any money or property," and includes the "value" of labor since Congress has not excluded any particular property from this § 83(a) deduction.

26 CFR § 1.83-3(g) embraces intangible personal property as one's cost having only sold one's labor in exchange for compensation. In fact, in order to impose amounts which are not to be included in "Gross Income" upon Citizens, the Secretary/IRS must deny Citizens a right as ar-

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[31] See Appendix B-15

[32] See Appendix F.

ticulated by Congress in IRC § 83(a) and the regulations thereunder.

The law does not exclude any particular property, for which there is no basis, from cost. The cost equals the "value" of any and all property [labor] disposed to obtain other property [compensation], unless it is expressly excluded by Congress in law. The issue of basis never enters the equation.

One can determine the value (FMV) of one's labor by simply looking at the compensation one receives and determining its value. If one receives $1,000 for a week's labor, the value or FMV of that labor is $1,000.

Based on IRC § 83(a), the deduction [for the value of labor] is to be taken [returned to the "taxpayer"] from "such property" [compensation] to create the "excess" which ONLY then is included in "Gross Income." If there is no "excess" then there is no "Gross Income" and no "Taxable Income."

As used in said statutes and regulations, the terms "any" or "any property" are to be construed as all inclusive until Congress "expressly" provides an exception to support the notion that such terms are not all inclusive.

There is ample case law to support the principle of statutory construction which makes the term "any property" all inclusive; meaning that nothing is to be excluded by the word "any." This is confirmed by the following cases where the U.S. contends successfully that "any property" is all inclusive and means all property (see *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989); *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002) citing Gonzalez and Monsanto). Although these cases are not about taxes, the U.S. successfully argued in this Court that "any property" is all inclusive and means all property. The cases are summarized below and cited in the Appendix as indicated:

1. **1989** – *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989) *(In summary, see Appendix G)* -

Heroin manufacturer Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that "**any property**" is all inclusive and therefore means the U.S. can seize any and all of Monsanto's property unless Monsanto can point to a specific exclusion of attorney's fees under the law (see Appendix G). Since the 1989 *Monsanto* decision regarding "any property," three very recent decisions cited below deal directly with the same question as to how to interpret the term "any"; is it all inclusive or subject to derogation? The inclusion of the lengthy excerpts is included in the Appendix and is intended to offer appreciable input upon the topic.

2. **2002** - *Department of Housing and Urban Renewal v. Rucker,* 535 U.S. 125, 130-31 (2002) citing *Gonzalez* and *Monsanto (citing Monsanto and Gonzales) (In summary, see Appendix H)* - U.S. argues successfully that "innocent owner" defense unavailable to co-tenant of low income housing who, although innocent, was subject to the statute's eviction of an all inclusive "any tenant" of a leased unit where prohibited activity had taken place. U.S. can evict the innocent tenant of low income housing unit which is the scene of prohibited behavior. Here Rehnquist in this unanimous 2002 decision (BEYER took no part) in *Department of Housing and Urban Renewal v. Rucker,* draws upon *Monsanto* for guidance in another instance hinged upon the interpretation of "any," affirming the claim made herein by Petitioner (see Appendix H).

3. **1997** - *U.S. v. Gonzales,* 520 U.S. 1, 4-6 (1997) *(In summary, see Appendix I)* - U.S. argues successfully that ***"any"*** in sentencing laws is all inclusive and therefore prevents the defendants from serving federal time concurrently with other sentences, U.S. argues for more jail time and gets more jail time for convict (see Appendix I).

4. **1994** – *U.S. v. Alvarez-Sanchez,* 511 U.S. 350, 357 (**1994**); *(In summary, see Appendix J)* – U.S. argues successfully that, **because the statute expressly provides for an exception to "any,"** that it is not all inclusive, that a delay should not preclude a criminal defendant's

confession or statement to state police from being used as evidence in federal case commenced thereafter. DOJ can use confession sought to be suppressed by criminal defendant (see Appendix J).

Thus it can be seen that any rendition of the term "any property" which does not include ALL PROPERTY is inconsistent with the four cases cited above wherein the U.S. argued successfully (and this Court agreed) that "any property" means all inclusively, ALL PROPERTY. There is no basis in law or statutory construction which allows the Secretary or the IRS to exclude the value of labor from the term "any property" when Congress has not done so. The Secretary confirms this understanding in the regulations by making it clear that the cost is the value of "**any** [all] money or property" given in exchange for said compensation and the Secretary, by said regulation, does not exclude the value of labor or any other particular type of property.

Moreover, the law and the regulations govern what the Secretary or his alleged Delegates can do with regard to the calculation of "Gross Income" as previously cited (see IRC §§ 83(a), 212, 1001, 1011, and 1012).

> "The regulations...now govern, and will continue to govern, the abbreviated application process. See *Fort Stewart Schools v. FLRA*, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990). **No matter what an agency said in the past, or what it did not say, after an agency issues regulations it must abide by them.**" *Schering Corp. v. Shalala*, 995 F.2d 1103 (D.C.Cir. 1993)

It is certain that IRC § 83(a) applies to the calculation of an individual's compensation for labor for which only the "excess" is to be included in "Gross Income", as can be seen from the following Court ruling; *Montelepre Systemed, Inc. v. CIR, 956 F.2d 496 at 498 (CA5 1992)*: "**Section 83(a) explains how property received in ex-**

change for services is taxed."[33]

Thus it is clear that the term "any money or property" as articulated by the Secretary does not exclude labor as a particular type of property which is to be excluded from said IRC § 83(a) deduction.

Moreover, there are no Federal 1040 type returns, forms, schedules or worksheets ("Returns") which accommodate or make it possible for a Citizen or Tax Professional to complete a 1040 return and claim the rightful deductions for the value of one's labor as articulated by Congress in IRC § 83(a). The 1040 return incorrectly assumes on line 7 that all compensation and wages are included in "Gross Income" which is contrary to the first seven words of IRC § 61 and a violation of one's right to the lawful IRC § 83(a) deduction.[34]

The Murphy v. IRS ruling supports Petitioner's contents herein

Petitioner's contention that the IRC § 83(a) deduction applies to the value of one's labor without respect to any basis is further supported by the D.C. Appellate Court's

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[33] See also the following cases for which excerpts are included in Appendix D; *MacNaughton v. CIR*, 888 F.2d 418, 421 (CA6 1989): *Pledger v. CIR*, 641 F.2d 287, 293 (CA5 1981): *Alves v. CIR*, 734 F.2d 478, 481 (CA9 1984) See *Cohn v. CIR*, 73 USTC 443, 446-47 (1979)." *Klingler Electric Co. v. CIR*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991) *Robinson v. CIR*, 82 USTC 444, 459 (1984) *Cohn v. CIR*, 73 USTC 443, 446-47 (1979) Concurring with *Cohn*, *Alves*, see *Centel Communications Co. v. CIR*, 920 F.2d 1335, 1342 (CA7 1990) Annotations / Public Law.

[34] Since the IRC § 83(a) deduction is taken from compensation before it can be included in the "excess" ("gross income") of § 83(a), one could rightfully enter zero on line 7 of the 1040 return since said return(s) start with IRC § 61 and not IRC § 83(a). However, several Citizens have recently been convicted of filing false returns when taking the rightful § 83(a) deduction and entering zeros on the 1040. Therefore, one can only speculate that the Secretary and the IRS, without lawful justification, do not want Citizens to take their rightful § 83(a) deduction, as authorized by Congress, on the 1040 return—even though the Secretary has not excluded the value of one's "labor" from the property (cost) which one can deduct from compensation pursuant to § 83(a) and the regulations thereunder.

recent ruling in *Murphy v. IRS* (See Appendix L). The government argued in said case that Compensation for non-physical damages was income within the meaning of the 16th Amendment. They argued that since one had money after payment for damages whereas before they did not, said compensation was taxable.[35] The Court disagreed and held that since the compensation was a "return of capital", it was not income within the meaning of the 16th Amendment as follows:

> "In Murphy's view, the Court thereby made clear that the recovery of compensatory damages for a "personal injury" --**of whatever type** --is analogous to a "return of capital" and therefore is not income under the IRC or the *Sixteenth Amendment.*" (See *Murphy*, Appendix L).

Labor is property (see FN[29] *supra)* and the Murphy Court ruled that:

> "The Supreme Court has held the word "incomes" in the Amendment and the phrase "gross income" in *§ 61(a) of the IRC* are coextensive. *See Helvering v. Clifford, 309 U.S. 331, 334, 60 S. Ct. 554, 84 L. Ed. 788, 1940-1 C.B. 105 (1940) (§ 61* represents the "full measure of [the Congress's] taxing power"). When it first construed those terms in *Eisner v. Macomber, 252 U.S. 189, 207, 40 S. Ct. 189, 64 L. Ed. 521, 1920-3 C.B. 25,*

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[35] The Court states "Noting that the power of the Congress to tax income "extends broadly to all economic gains," *Comm'r v. Banks, 543 U.S. 426, 433, 125 S. Ct. 826, 160 L. Ed. 2d 859 (2005),* **the Government next maintains that compensatory damages "plainly constitute economic gain, for the taxpayer unquestionably has more money after receiving the damages than she had prior to receipt of the award."** On that basis, the Government contends Murphy's reliance upon footnote eight of *Glenshaw Glass* is misplaced; merely because the **Congress "has historically excluded personal injury recoveries from gross income, based on the make-whole or restoration-of-human-capital** theory, does not mean that such an exclusion is mandated by the *Sixteenth Amendment.*" Because the Supreme Court in *Glenshaw Glass* was construing "gross income" with reference only to the IRC, the Government argues footnote eight addresses only a now abandoned congressional policy, not the outer limit of the *Sixteenth Amendment.*" (See Appendix M).

T.D. 3010 (1920), the Supreme Court held the taxing power extended to any "**gain** derived from capital, from **labor**, or from both combined." Later, after explaining that [*15] *Eisner* was not "meant to provide a touchstone to all future gross income questions," the Court added that under the IRC -- and, by implication, under the *Sixteenth Amendment* -- the Congress may "tax all gains" or "accessions to wealth." *Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430-31, 75 S. Ct. 473, 99 L. Ed. 483, 1955-1 C.B. 207 (1955).*"

Therefore, the return of capital [or property], which is what one proffers to an employer as labor in return for compensation, is not income within the meaning of the 16th Amendment.[36] It does not matter whether the compensation comes from an insurance company, a Court Judgment or from an exchange of labor for compensation. In the end, it is only the "gain" which is taxable, as ruled by the *Murphy* Court. The *Murphy* Court did not agree that because one had more money after the compensation was paid than they had before meant that said compensation was taxable. In essence the government argued that the non-physical damage compensation had no basis just as the *Talmage* USTC argued. Just as there is no "basis" but only the "value" to be considered when calculating one's gross income in non-physical damage compensation, so the "value" of one's labor is to be deducted thereby making only the "excess" equal to one's gross income.

The *Murphy* Court also points out that:

> "In an opinion rendered to the Secretary of the Treasury on the question whether proceeds from an accident insurance policy were income under the IRC as it stood prior to the 1918 Act, the Attorney General stated:
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> > 'Without affirming that the human body is in a technical sense the "capital" invested in an ac-

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[36] See Murphy v. IRS, Appendix L, which states "...the Congress may 'tax all **gains**' or 'acessions to wealth.' *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430-31 (1995).

> cident policy, in a broad, natural sense the proceeds of the policy do but substitute, so far as they go, capital which is the source of future periodical income. They merely take the place of capital in human ability which was destroyed by the accident. They are therefore "capital" as distinguished from "income" receipts.'"

The Attorney General regarded the destruction of one's human ability as a result of an accident as "capital" and not "income". In like manner, when one's labor is consumed by an employer, it is destroyed "as a source of future periodical income" and therefore likewise is not taxable; especially when "basis" never entered the discussion in the *Murphy* ruling.

Congress can write the law (see IRC § 61(a)) such that it appears that compensation is included in "gross income" when, in fact, IRC § 83 excludes [with no exception] the value of one's labor in the "excess" which then becomes "gross income". Petitioner contends that the reason Congress wrote IRC § 83 was to protect and preserve one's human investment ["source of future periodical income"] when an employer consumes [destroys the future use of] one's labor for compensation.

Secretary wrongfully creates subject of IRC § 1 tax

The 16th Amendment allows that Congress alone shall have the power to lay the taxes ultimately sought by the IRS, but the Respondent can produce only executive branch regulations to allege a liability.

As directed by *Brown v. FDA*, 153 F.3d 155, 160-167 (CA4 1998), aff'd 529 U.S. 120 (2000) and by *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984), the traditional tools of statutory construction are used to ascertain congressional intent regarding whether Congress intended to embrace as subject to the IRC, chapters 1, 2, 21 and/or 24 and Peti-

tioner who is a National Citizen of the United States[37] and one who is domiciled and works in one of the several states.

First of all, agency power is "not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect ***the will of Congress as expressed by the statute.***'" *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 213-14 (1976) (quoting *Manhattan Gen. Equip. Co. v. Commission*, 297 U.S. 129, 134 (1936)).[38] Thus, the inquiry must be whether Congress intended to subject Citizens of the United States (see FN[37] *infra*) who inhabit one of the several states to the IRC and the income taxes referenced therein (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (stating that "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations ***is limited to the authority delegated by Congress***"); *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) (providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them").

Pursuant to *Chevron* and *Brown*, the intent of Congress must be considered first because "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress" (see *Chevron*, 467 U.S. at 842-43). Only if the intent of Congress is ambiguous can one defer to a permissible interpretation by the agency (see *Chevron*, 467 U.S. at 843).

The starting point in every case involving construction of a statute is the language of the statute itself. (See *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421

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[37] Petitioner is a Citizen of the United States pursuant to the U.S. Constitution Article I, Section 2, clause 2 and the 14th Amendment and is not a federal statutory "citizen of the United States."

[38] See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995).

U.S. 723, 756 (1975) (Powell, J., concurring)); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173-175 (1994)).

In the IRC, Congress has indeed named a subject of the tax or procedure in other commonly-applied portions of the Tax Code's statutory scheme, such as in chapter 2:

> IRC § 1402(b)[39] ...***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not, for the purposes of this chapter be considered to be a nonresident alien individual***.
>
> 26 CFR 1.1402(b)-1(d)[40] Nonresident aliens. A nonresident alien individual never has self-employment income. While ***a nonresident alien individual*** who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa... ***may be subject to the applicable income tax provisions*** on such income, such nonresident alien individual ***will not be subject to the tax on self-employment income***, since any net earnings which he may have...do not constitute self-employment income. ***For the purposes of the tax on self-employment income, an individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, or...of Guam or American Samoa is not considered to be a nonresident alien individual***.

And in Tax Code chapter 21, Congress named a subject:

> IRC § 3121(e)[41] An individual who is ***a citizen of the Commonwealth of Puerto Rico*** (but not otherwise a citizen of the United States) ***shall be considered...as a citizen*** of the United States.

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[39] See Appendix B-1

[40] See Appendix B-12

[41] See Appendix B-2

26 CFR 31.0-2(a)(1)[42] The terms defined in the provisions of law contained in the regulations in this part shall have the meaning so assigned to them.

26 CFR 31.3121(e)-1(b)[43] ...The term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

And in Social Security administration legislation Congress named a beneficiary:

42 USC § 411(b)(2)[44] The net earnings from self-employment, if such net earnings for the taxable year are less than $400. ***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not***, for the purpose of this subsection, ***be considered to be a nonresident alien individual***. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

And in Tax Code chapter 24, Congress has named a subject of Form W-4 requirements:

IRC § 3401(c)[45] Employee.- For the purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

These are the only other chapters of the Tax Code, other than chapter 1, which the Respondent employs against or upon the individual, employee or self employed, as it relates to the imposition of taxes under the IRC and compensation for personal services performed by the Peti-

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[42] See Appendix B-16

[43] See Appendix B-17

[44] See Appendix B-8

[45] See Appendix B-3

tioner. None of these subjects, expressly named by Congress, happen to be the Petitioner.

In the chapters referenced above, all subjects of said taxes were found in statutes called "definitions," but in chapter 1 of the IRC there is no section called "definitions" which even remotely mentions a subject or "citizen" as found so clearly identified in these other chapters. These definitions are merely a simple expression or exercise of the power conferred upon Congress by the Constitution, Amendment 16, to wit:

> "The ***Congress shall have power to lay and collect taxes on incomes....***
>
> "***But the section contains nothing to that effect***, and, therefore, ***to uphold*** [IRS Commr's] addition to the tax ***would be to hold that it may be imposed by regulation, which, of course, the law does not permit***. *U.S. v. Calamaro*, 354 US 351, 359; *Koshland v. Helvering*, 298 US 441, 446-67; *Manhattan Equipment Co. v. Commissioner*, 297 US 129, 134." [46]

Again, while Congress has clearly identified a subject in other chapters of the IRC which impose taxes and which clearly do not pertain to the Petitioner but rather apply to people with other citizenships and occupations and their "income," Congress has at the same time never identified a subject of IRC chapter 1 tax[47].

Because executive branch officials have no legislative authority, their regulations cannot add to or detract from those enactments of Congress, our lawmakers. While Congress has taken the time to name a subject of taxes imposed by chapters other than chapter 1, it has not identified the subject of any tax imposed by IRC Chapter one.

The mention of citizenship in regulation alone is a grossly insufficient basis upon which to tax citizens who inhabit one of the several states. The Secretary has im-

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[46] See *CIR v. Acker*, 361 U.S. 87, 92 (1959).

[47] Citizenship mentioned in regulation alone (see 26 CFR 1.1-1(a), (b), (c)). This **regulation** is not the work or intent of Congress. Congress has never named the subject of any tax imposed under the provisions of the IRC Chapter one.

posed a tax on "citizens of the United States" through 26 CFR 1.1-1(c), and has done so without authority to do so—the authority to lay income tax having been reserved to Congress and Congress alone. Said regulation is null and void for derogation of statute.

Petitioner believes that there are substantial issues raised herein regarding personam and subject matter jurisdiction which Respondent and the lower Courts have refused to address. Petitioner hopes to obtain clarification as to what the law is so he will not be required to speculate as to the meaning of the law.

Mr. Justice Brandeis in his famous dissenting opinion in *Olmstead v. United States*, 277 U.S. 438, 471-485 (1928) states:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. ***Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.*** To declare that, in the administration of the criminal law, the end justifies the means...***to declare that the Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution.*** Against that pernicious doctrine this Court should resolutely set its face."

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CONCLUSION

For the reasons set forth herein, Petitioner urges this Court to grant review in this case.

I have reviewed this Petition and the Appendix attached hereto and to the best of my knowledge and belief they are true and correct.

I further affirm under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 28th day of August, 2006.

Respectfully submitted,

Joseph Oquendo Saladino